



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

9 Bond Street, 7th Floor
Brooklyn, NY 11201

DECISION

<p>DEPARTMENT OF HEALTH & MENTAL HYGIENE,</p> <p style="text-align: center;">-against-</p> <p>UTA BETH RACHEL SCHOOL FOR GIRLS 241 KEAP ST, BROOKLYN,NY 11211</p> <p style="text-align: right;">(Respondent)</p>	<p>Violation/Summons No.: <u>30052-19D0</u></p> <p>Decision Date: <u>5/31/2019</u></p> <p>Hearing Officer: <u>Scaff, Didi</u></p> <p>Respondent's Rep.: <u>ARON MANDEL</u></p> <p>Petitioner's Rep.: <u>IO PAULETTE KENTISH</u> <u>THOMAS MERRILL, ESQ.</u></p> <p>Type of Hearing: <u>In Person</u></p>
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Summary Disposition: **SUSO - Sustained**

LINE ITEM	VIOL. CODE	CONDITION (SEVERITY)	CODE SECTION	FINDINGS	DECISION CODE	PENALTY
1	N	none	3.05	Mr. Merrill submitted a copy of the commissioner's order into evidence (Ex. 1). The order was served upon respondent on 4/8/19. Issuing officer (IO) Kentish testified that she conducted an immunization audit on 4/10/19. After obtaining the school exclusion list, she inquired about the cited child (M.F. DOB 7/24/11). She accompanied the school secretary to a classroom. The secretary asked the teacher in English if M.F. was present. The teacher then asked the whole class in English for M.F. to raise her hand is she was present. M.F. raised her hand. IO Kendish witnessed the whole exchange personally. Respondent was unable to provide M.F.'s immunization records. Mr.	Sustained	\$1,000.00

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				<p>Greenberg, the facility manager, explained to IO Kentish that that child was not on the school bus in the morning and that her parents must have dropped her off later that morning. Mr. Mandel denied the charge. He submitted a statement from Mr. Greenberg (Ex. A) which contradicts the IO's sworn to statement and testimony. In his statement, Mr. Greenberg said that the excluded child was not on the attendance sheet and was not in the classroom either. He said that the child who raised her hand was not M.F. Rather, that child raised her hand in response to the teacher asking the children in Yiddish if they knew why the inspector was here.</p> <p>I credit the issuing officer's sworn to statement contained in the summons and her oral testimony at the hearing and find that they support a violation under the cited section of law. I do not credit respondent's denial or Mr. Greenberg's written statement and find that respondent had an excludable child in attendance at the school with no immunization records. I therefore find that respondent failed to comply with the commissioner's order. I sustain the summons and impose the mandatory penalty in the amount of \$1000.00.</p>		
2	N	none	3.05	<p>Mr. Merrill submitted a copy of the commissioner's order into evidence (Ex. 1). The order was served upon respondent on 4/8/19. Issuing officer (IO) Kentish testified that she conducted an immunization audit on 4/10/19. After obtaining the school exclusion list, she inquired about the cited child (T.S. DOB 7/22/10). She accompanied the school secretary to a classroom. The secretary asked the teacher -- who was a substitute teacher -- in English if T.S. was present. The teacher then asked the whole class in English for T.S. to raise her hand if she was present. T.S. raised her hand. IO Kentish witnessed the whole exchange personally.</p>	Sustained	\$1,000.00

per SW/

				<p>Respondent was unable to provide T.S.'s immunization records. Mr. Greenberg, the facility manager, explained to IO Kentish that that child was not on the school bus in the morning and that her parents must have dropped her off later that morning. Mr. Mandel denied the charge. He submitted a statement from Mr. Greenberg (Ex. A) Which contradicts the IO's sworn to statement and testimony. In his statement, Mr. Greenberg said that the excluded child was not on the attendance sheet and was not in the classroom either. He said that the child who raised her hand was not T.S. Rather "when the inspector asked for that specific name a child raised her hand to tell the substitute teacher that the child is absent" (see Ex. A).</p> <p>I credit the issuing officer's sworn to statement contained in the summons and her oral testimony at the hearing and find that they support a violation under the cited section of law. I do not credit respondent's denial or Mr. Greenberg's written statement and find that respondent had an excludable child in attendance at the school with no immunization records. I therefore find that respondent failed to comply with the commissioner's order. I sustain the summons and impose the mandatory penalty in the amount of \$1000.00.</p>		
					TOTAL:	\$2,000.00

per still

IF YOU ARE FOUND IN VIOLATION, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION DATE OR 35 DAYS IF MAILED.

- **To pay by mail**, send a check or money order to the Dept. of Finance Commissioner, PO Box 4199, Church Street Station, New York, NY 10261-4199. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number and ACCELA ID on the check or money order.
- **To pay in person**, bring a check, money order or credit card and this decision to the OATH Hearings Division locations in:
 - Manhattan at 66 John Street, 11th floor, New York, NY
 - Brooklyn at 9 Bond Street, 6th floor, Brooklyn, NY
 - Queens at 31-00 47th Avenue, 3rd floor, Long Island City, NY
- **To pay online** using a credit or debit card, go to nyc.gov/mylicense. First time users will be required to set up a User ID, password, and request a PIN to use this service. A summons number is required to pay. Instructions are provided on the website. A service fee is charged for all credit and debit card transactions.

IF YOU DISAGREE WITH THE DECISION, YOU MAY APPEAL IT

You **MUST** use OATH's online or mail-in appeal forms available on OATH's website to submit your appeal. Instructions for filing an appeal may be found on the form and OATH's website at nyc.gov/oath/appeals.

Your appeal **MUST** be received by the OATH Hearings Division **within 30 days** of the decision date, or 35 days if the decision was mailed to you.

To appeal you **MUST** pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, also available on OATH's website.

APPEAL BY ENFORCEMENT AGENCY

If you wish to answer an appeal filed by an enforcement agency, you **MUST** use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website at nyc.gov/appeals.

Your answer must be received **within 30 days** of the date of the enforcement agency's appeal, or within 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty even if your case was originally dismissed after the hearing.

For more information,
see OATH's website nyc.gov/oath
or call 1-844-OATH-NYC

GN3c Decision Back Health 5-9-17